

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

RAMIA SABHERWAL; DONALD T.H.  
SMITH,

Plaintiffs,

vs.

THE BANK OF NEW YORK MELLON,  
For the Certificate holders of CWALT,  
Inc., Alternative Loan Trust 2005-62,  
Mortgage Pass-Through Certificates  
2005-62 formerly known as the Bank of  
New York; BANK OF AMERICA, N.A.;  
RECONSTRUCT COMPANY, N.A.;  
MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC.;  
OCWEN LOAN SERVICING, LLC;  
REAL TIME RESOLUTIONS; DOES 1  
through 10 inclusive,

Defendants.

CASE NO. 11cv2874-WQH-BGS  
ORDER

HAYES, Judge:

The matters before the Court are the Motions to Dismiss filed by Defendant OCWEN  
Loan Servicing, LLC (ECF No. 4), Real Time Resolutions (ECF No. 7), and Bank of America,  
N.A., Mortgage Electronic Registration Systems, Inc., Reconstruct Company, N.A., and Bank  
of New York Mellon (ECF No. 8).

**I. Background**

On November 3, 2011, Plaintiffs Ramia Sabherwal and Donald T.H. Smith initiated this  
action by filing a Complaint in the Superior Court of California for the County of San Diego.

1 (ECF No. 1). On December 8, 2011, the matter was removed to this Court.

2 On December 13, 2011, Defendant OCWEN Loan Servicing, LLC (“Ocwen”) filed a  
3 Motion to Dismiss. (ECF No. 4). Plaintiffs filed an Opposition (ECF No. 10), and Ocwen  
4 filed a Reply (ECF No. 13).

5 On December 15, 2011, Real Time Resolutions (“Real Time”) filed a Motion to  
6 Dismiss. (ECF No. 7). Plaintiffs filed an Opposition (ECF No. 11), and Real Time filed a  
7 Reply (ECF No. 16).

8 On December 15, 2011, Defendants Bank of America, N.A. (“Bank of America”),  
9 Mortgage Electronic Registration Systems, Inc. (“MERS”), Reconstruct Company, N.A.  
10 (“Reconstruct”), and the Bank of New York Mellon for the Certificate holders of CWALT,  
11 Inc., Alternative Loan Trust 2005-62, Mortgage Pass-Through Certificates 2005-62 formerly  
12 known as the Bank of New York (“Mellon”) filed a Motion to Dismiss. (ECF No. 8).  
13 Plaintiffs filed an Opposition (ECF No. 12), and Defendants Bank of America, MERS,  
14 Reconstruct, and Mellon filed a Reply (ECF No. 15).

15 **II. Allegations of the Complaint**

16 Plaintiffs asserts six “complaints for declaratory relief” against Defendants Ocwen, Real  
17 Time, Bank of America, MERS, Reconstruct, and Mellon regarding loans made for real  
18 properties located at 7891 Laurelridge Road in San Diego, California (Loan #1 and Loan #2),  
19 1390 Vegas Valley Drive in Las Vegas, Nevada (Loan #3 and Loan #4), and 9616 Gunsmith  
20 Drive in Las Vegas, Nevada (Loan #5 and Loan #6). For each of the loans on these properties,  
21 Plaintiffs allege that Defendants are “required under the Uniform Commercial Code [“UCC”]  
22 to establish any of the claimed rights to payment” and to “present the original notes” upon  
23 request by Plaintiffs. (ECF No. 1 at 19; *see also* 22-23, 26, 31, 35, 39).

24 In first claim for declaratory relief, regarding Loan #1 for 7891 Laurelridge Road,  
25 Plaintiffs allege that there is a dispute between Plaintiffs and Defendants regarding the rights  
26 and duties on the note of deed of trust. Plaintiffs allege that Mellon is not the current successor  
27 to the note of deed of trust. Plaintiffs allege that Mellon was required to “document its claimed  
28 ownership” of the note of deed of trust and “present the original notes” to Plaintiffs on demand

1 pursuant to the implied covenant of good faith and fair dealing and the UCC. *Id.* at 40-41.  
 2 Plaintiffs allege that Mellon has demanded payment on the note of deed of trust, but  
 3 “Plaintiff[s] dispute[] the Defendant is entitled to receive any payments whatsoever.” *Id.* at  
 4 41. Plaintiffs allege that they have received a notice of default, notice of intent to sell, and  
 5 notice of trustee’s sale by Mellon, but Plaintiffs do “not believe the Defendants, complete  
 6 strangers to the Plaintiff[s] lacking any privity of contract with the Plaintiff[s], ha[ve] a legal  
 7 right to record any instrument... against the property.” *Id.* at 42.

8 In the second claim for declaratory relief, regarding Loan #2 for 7891 Laurelridge Road,  
 9 Plaintiffs allege that there is a dispute between Plaintiffs and Defendants regarding the rights  
 10 and duties on the note of deed of trust. Plaintiffs allege that Doe 1 is not the current successor  
 11 to the note of deed of trust. Plaintiffs allege that Mellon was required to “document its claimed  
 12 ownership” of the note of deed of trust and “present the original notes” to Plaintiffs on demand  
 13 pursuant to the implied covenant of good faith and fair dealing and the UCC. *Id.* at 48.  
 14 Plaintiffs allege that Doe 1 has demanded payment on the note of deed of trust, but “Plaintiff[s]  
 15 dispute[] that the Defendant is entitled to receive any payments whatsoever.” *Id.* at 49.  
 16 Plaintiffs allege that they have received a notice of default, notice of intent to sell, and notice  
 17 of trustee’s sale by Doe 1, but Plaintiffs do “not believe the Defendants, complete strangers to  
 18 the Plaintiff[s] lacking any privity of contract with the Plaintiff[s], ha[ve] a legal right to record  
 19 any instrument... against the property.” *Id.* at 50.

20 In the third claim for declaratory relief, regarding Loan #3 for 1390 Vegas Valley Drive,  
 21 Plaintiffs allege that there is a dispute between Plaintiffs and Defendants regarding the rights  
 22 and duties on the note of deed of trust. Plaintiffs allege that Mellon is not the current successor  
 23 to the note of deed of trust. Plaintiffs allege that Mellon was required to “document its claimed  
 24 ownership” of the note of deed of trust and “present the original notes” to Plaintiffs on demand  
 25 pursuant to the implied covenant of good faith and fair dealing and the UCC. *Id.* at 55-56.  
 26 Plaintiffs allege that Mellon has demanded payment on the note of deed of trust, but  
 27 “Plaintiff[s] dispute[] the Defendant is entitled to receive any payments whatsoever.” *Id.* at  
 28 56. Plaintiffs allege that they have received a notice of default, notice of intent to sell, and

1 notice of trustee's sale by Mellon, but Plaintiffs do "not believe the Defendants, complete  
 2 strangers to the Plaintiff[s] lacking any privity of contract with the Plaintiff[s], ha[ve] a legal  
 3 right to record any instrument... against the property." *Id.* at 57.

4 In the fourth claim for declaratory relief, regarding Loan #4 for 1390 Vegas Valley  
 5 Drive, Plaintiffs allege that there is a dispute between Plaintiffs and Defendants regarding the  
 6 rights and duties on the note of deed of trust. Plaintiffs allege that Doe 2 is not the current  
 7 successor to the note of deed of trust. Plaintiffs allege that Doe 2 was required to "document  
 8 its claimed ownership" of the note of deed of trust and "present the original notes" to Plaintiffs  
 9 on demand pursuant to the implied covenant of good faith and fair dealing and the UCC. *Id.*  
 10 at 62-63. Plaintiffs allege that Doe 2 has demanded payment on the note of deed of trust, but  
 11 "Plaintiff[s] dispute[] the Defendant is entitled to receive any payments whatsoever." *Id.* at  
 12 63. Plaintiffs allege that they have received a notice of default from Doe 2, but Plaintiffs do  
 13 "not believe the Defendants, complete strangers to the Plaintiff[s] lacking any privity of  
 14 contract with the Plaintiff[s], ha[ve] a legal right to record any instrument... against the  
 15 property." *Id.* at 64.

16 In the fifth claim for declaratory relief, regarding Loan #5 for 9616 Gunsmith Drive,  
 17 Plaintiffs allege that there is a dispute between Plaintiffs and Defendants regarding the rights  
 18 and duties on the note of deed of trust. Plaintiffs allege that Doe 3 is not the current successor  
 19 to the note of deed of trust. Plaintiffs allege that Doe 3 was required to "document its claimed  
 20 ownership" of the note of deed of trust and "present the original notes" to Plaintiffs on demand  
 21 pursuant to the implied covenant of good faith and fair dealing and the UCC. *Id.* at 69.  
 22 Plaintiffs allege that Doe 3 has demanded payment on the note of deed of trust, but "Plaintiff[s]  
 23 dispute[] the Defendant is entitled to receive any payments whatsoever." *Id.* at 70. Plaintiffs  
 24 allege that they have received a notice of default, notice of intent to sell, and notice of trustee's  
 25 sale by Doe 3, but Plaintiffs do "not believe the Defendants, complete strangers to the  
 26 Plaintiff[s] lacking any privity of contract with the Plaintiff[s], ha[ve] a legal right to record  
 27 any instrument... against the property." *Id.* at 71.

28 In the sixth claim for declaratory relief, regarding Loan #6 for 9616 Gunsmith Drive,

1 Plaintiffs allege that there is a dispute between Plaintiffs and Defendants regarding the rights  
 2 and duties on the note of deed of trust. Plaintiffs allege that Doe 4 is not the current successor  
 3 to the note of deed of trust. Plaintiffs allege that Doe 4 was required to “document its claimed  
 4 ownership” of the note of deed of trust and “present the original notes” to Plaintiffs on demand  
 5 pursuant to the implied covenant of good faith and fair dealing and the UCC. *Id.* at 76-77.  
 6 Plaintiffs allege that Doe 4 has demanded payment on the note of deed of trust, but “Plaintiff[s]  
 7 dispute[] the Defendant is entitled to receive any payments whatsoever.” *Id.* at 77. Plaintiffs  
 8 allege that they have received a notice of default, notice of intent to sell, and notice of trustee’s  
 9 sale by Doe 4, but Plaintiffs believe “that the Defendant is not the true owner and/or holder of  
 10 the Note and ... the Defendants have no right to conduct any sale.” *Id.* at 78.

11 **III. Discussion**

12 Defendant Ocwen contends that Plaintiffs’ allegations are vague and conclusory, and  
 13 that “Ocwen cannot intelligently respond” to the meritless, “naked assertions” contained in the  
 14 Complaint. (ECF No. 4-1 at 6). Defendant Real Time contends that Plaintiffs’ Complaint is  
 15 “vague, ambiguous, and poorly pled,” and “fails to allege a single actionable claim against  
 16 Defendant Real Time Resolutions.” (ECF No. 7-1 at 3). Defendants Bank of America, MERS,  
 17 Reconstruct, and Mellon contend that “Plaintiffs’ general and conclusory allegations do not  
 18 state a judicable claim for relief.” (ECF No. 8 at 2).

19 Plaintiffs contend that they have “filed a simple cause of action for declaratory relief”  
 20 and “have fully complied with the statutory pleading requirements of a cause of action for  
 21 declaratory relief.” (ECF No. 10 at 6, 16; ECF No. 11 at 5, 15; ECF No. 12 at 5, 15).

22 Federal Rule of Civil Procedure 12(b)(6) permits dismissal for “failure to state a claim  
 23 upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). Federal Rule of Civil Procedure  
 24 8(a) provides: “A pleading that states a claim for relief must contain ... a short and plain  
 25 statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2).  
 26 Dismissal under Rule 12(b)(6) is appropriate where the complaint lacks a cognizable legal  
 27 theory or sufficient facts to support a cognizable legal theory. *See Balistreri v. Pacifica Police*  
 28 *Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

1 To sufficiently state a claim to relief and survive a Rule 12(b)(6) motion, a complaint  
 2 “does not need detailed factual allegations” but the “[f]actual allegations must be enough to  
 3 raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544,  
 4 555 (2007). “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’  
 5 requires more than labels and conclusions, and a formulaic recitation of the elements of a cause  
 6 of action will not do.” *Id.* (quoting Fed. R. Civ. P. 8(a)(2)). When considering a motion to  
 7 dismiss, a court must accept as true all “well-pleaded factual allegations.” *Ashcroft v. Iqbal*,  
 8 556 U.S. 662, 129 S. Ct. 1937, 1950 (2009). However, a court is not “required to accept as  
 9 true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable  
 10 inferences.” *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001); *see, e.g.*,  
 11 *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 683 (9th Cir. 2009) (“Plaintiffs’ general  
 12 statement that Wal-Mart exercised control over their day-to-day employment is a conclusion,  
 13 not a factual allegation stated with any specificity. We need not accept Plaintiffs’ unwarranted  
 14 conclusion in reviewing a motion to dismiss.”). “In sum, for a complaint to survive a motion  
 15 to dismiss, the non-conclusory factual content, and reasonable inferences from that content,  
 16 must be plausibly suggestive of a claim entitling the plaintiff to relief.” *Moss v. U.S. Secret*  
 17 *Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (quotations omitted).

18 California Code of Civil Procedure section 1060 provides:

19 Any person interested under a written instrument ... or under a contract,  
 20 or who desires a declaration of his or her rights or duties with respect  
 21 to ... property ... may, in cases of actual controversy relating to the legal  
 22 rights and duties of the respective parties, bring an original action... in  
 23 the superior court for a declaration of his or her rights and duties in the  
 24 premises, including a determination of any question of construction or  
 25 validity arising under the instrument or contract. He or she may ask for  
 26 a declaration of rights or duties, either alone or with other relief; and  
 27 the court may make a binding declaration of these rights or duties....

28 Cal. Code Civ. P. § 1060. “A complaint for declaratory relief is legally sufficient if it sets  
 29 forth facts showing the existence of an actual controversy relating to the legal rights and duties  
 30 of the respective parties under a contract and requests that these rights and duties be adjudged  
 31 by the court.” *Browning v. Aymard*, 224 Cal. App. 2d 277, 280 (1964); *see also Ball v.*  
*FleetBoston Financial Corp.*, 164 Cal. App. 4th 794, 800 (2008) (“Code of Civil Procedure

1 section 1060 permits an original action, and authorizes a claim for declaratory relief to be filed  
 2 alone ....") (quotation omitted) "It is not essential, to entitle a plaintiff to seek declaratory relief,  
 3 that he should establish his right to a favorable declaration." *Browning*, 224 Cal. App. 2d at  
 4 280; *see also Shepherd v. Paul A. Hauser, Inc.*, 138 Cal. App. 384, 387-88 (1934).

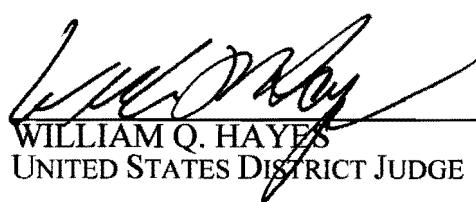
5 In this case, Plaintiffs allege that an actual controversy exists as to the legal rights and  
 6 duties of the parties regarding loans on certain property. Plaintiffs make conclusory allegations  
 7 that they do not believe that Defendants have any rights to the property. Plaintiffs make  
 8 conclusory allegations that the implied covenant of good faith and fair dealing and the Uniform  
 9 Commercial Code require Defendants to produce the original note and document their claim  
 10 to ownership before demanding payment from Plaintiffs. However, Plaintiffs fail to allege  
 11 specific facts "more than labels and conclusions." *Bell Atl. Corp.*, 550 U.S. at 555.

12 The Court finds that Plaintiffs have failed to allege "[f]actual allegations [that] raise a  
 13 right to relief above the speculative level." *Id.* In addition, Plaintiffs have failed to allege any  
 14 factual allegations regarding Defendants OCWEN Loan Servicing, LLC, Real Time  
 15 Resolutions, Bank of America, N.A., Mortgage Electronic Registration Systems, Inc., and  
 16 Reconstruct Company, N.A. The Court concludes that Plaintiffs have failed to allege sufficient  
 17 facts to show that they are entitled to relief. Fed. R. Civ. P. 8(a)(2).

18 **IV. Conclusion**

19 IT IS HEREBY ORDERED that the Motion to Dismiss filed by Defendant OCWEN  
 20 Loan Servicing, LLC (ECF No. 4), the Motion to Dismiss filed by Real Time Resolutions  
 21 (ECF No. 7), and the Motion to Dismiss filed by Bank of America, N.A., Mortgage  
 22 Electronic Registration Systems, Inc., Reconstruct Company, N.A., and the Bank of New  
 23 York Mellon (ECF No. 8) are GRANTED. The Complaint is DISMISSED. Plaintiffs may  
 24 file a motion for leave to file a First Amended Complaint, accompanied by a proposed First  
 25 Amended Complaint, within thirty days from the date of this order.

26  
 27 Dated: 4/9/12

28  
  
 WILLIAM Q. HAYES  
 UNITED STATES DISTRICT JUDGE